IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 94 OF 1994

The State of Maharashtra
at the instance of
Shri Rajendra Shankar Bhatkar,
43, Food Inspector, Food & Drugs
Administration 509-A Sadar Bazar,
Camp, Satara. ...Appellant.

V/s

Vilas Ramchandra Aundhkar,
age 40, Proprietor of
M/s Vilas Ramchandra Aundhkar,
H.No.101, Opp. Grampanchayat
Office, at Post Atit, Taluka
and District - Satara ...Respondent.

Mr. A.S. Shitole, APP for the State.

None for the respondent.

CORAM: V.M.KANADE,J.
DATE: 22nd February, 2005

ORAL JUDGMENT:

1. The appellant - State of Maharashtra has filed this appeal challenging the judgment and order passed by the Chief Judicial Magistrate, Satara in Summary Criminal Case No. 2318 of 1990. By the said judgment and order dated 20/10/1993, the Chief Judicial Magistrate was pleased to acquit the accused of the offence punishable under section 7(i) read with section 16 of the Prevention of Food Adulteration Act,

1954.

FACTS:

2. The prosecution case is in brief is that the Complainant - Food Inspector visited the shop of the accused, purchased 450 grams of ground-nut oil and the said sample which was taken was found to be adulterated. After obtaining sanction from the Commissioner, complaint was filed in the Court of Chief Metropolitan Magistrate.

3. I have heard the learned APP appearing on behalf of the State. None appears for the respondent though he is served.

FINDINGS:

4. The learned Trial Court acquitted the accused on the ground that there was no evidence on record to indicate whether the Public Analyst himself had analysed the sample sent for examination to him or he had got it analysed through his subordinate. The Trial Court also observed that this discrepancy had not been corrected by examining Public Analyst and, on the said ground, the accused was acquitted by the Trial Court. Rule 7 of the said Rules gives an option to the Public Analyst to analyse the sample himself or

cause it analysed by some other competent person. In the present case, the relevant portion of the report of the Public Analyst which is at Exhibit-39 reads as under:-

> "I hereby further certify that I have/have caused to be analysed the aforementioned sample, and declare the results of the analysis as follows:-"

From the aforesaid rule, it can be seen that there is no obligation on the Public Analyst to analyse the sample himself and discretion is given to him to get the sample analysed through his subordinate. However, in view of rule 7 the obligation is cast on the Public Analyst to mention in the report whether he has analysed the sample or one of his subordinates has analysed it and if there is failure on his part to mention this fact, it would be a lacuna in the prosecution case. Thus, there was an ambiguity regarding analysis of the sample. The Public Analyst has not scored off the relevant portion nor has mentioned the name of his subordinate showing that the sample had been analysed by the said subordinate. It thus created a doubt regarding the veracity of the said report. The Public Analyst has to ensure that

his report is not vague and he has to take utmost care and/or ensure that the report is properly prepared. On the failure of the Public Analyst to prepare such report, serious prejudice will be caused to the accused. Though, in my view, this is not a sole ground for acquitting the accused, yet I do not think that the view which is taken by the Trial Court is unreasonable or perverse in the facts and circumstances of the present case. Therefore, I do not see any reason to interfere with the said judgment and order of the Trial Court, particularly after a lapse of 12 years.

5. Appeal is accordingly dismissed.

(V.M. KANADE, J.)